The CORPORATION JOURNAL

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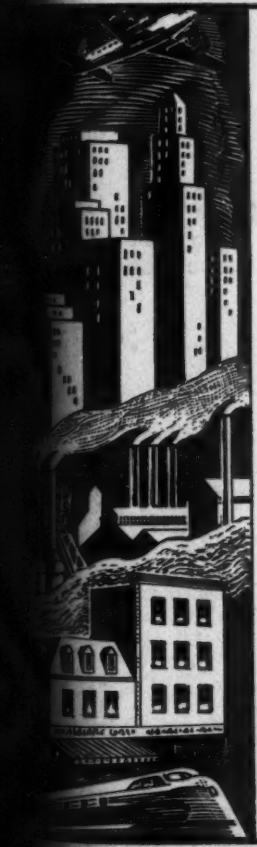

Georgia Supreme Court holds foreign corporation soliciting orders in interstate commerce not subject to income tax under law prior to 1950 amendment . . .
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...lished by The Corporation Trust Company and Associated Companies

HOW TO CHOOSE A TRANSFER AGENT... PART 2

CHECK FOR KNOW-HOW

BECAUSE

THE REGULAR ROUTINE TRANSFERS of a company's stock involve no great skill in the making – it is the record-keeping of them that requires the greater care. But *any* corporation, large or small, its stock closely held or widely distributed, comes inevitably some day to the transfer of the shares of a deceased stockholder. Then an important decision must be made: Are the supporting documents (administrator's or executor's appointment, court order, etc.) sufficient and proper? *Should the transfer be made or refused?* A wrong decision resulting in a loss to the stockholder may mean a suit for damages and consequent reflection upon the reputation of its officers and directors.

CT's SCORE

IN THIS RESPECT, The Corporation Trust Company occupies a strong position. Its organization has been *intimately associated with the evolution and development of the present practices and precedents* in the business of making transfers. In fact, the Stock Transfer Guide Service which it created (now maintained by its affiliate, Commerce Clearing House) is the authority almost all transfer agents depend on. So this organization is well equipped, in fact extraordinarily well equipped, to protect the corporation's officers and directors from the unauthorized transfers of stock.

The CORPORATION JOURNAL

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DECEMBER 1950

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Recent Decisions

domestic corporations

NEW YORK

Sole stockholder ruled, not to be in a position to maintain a derivative suit where his shares were purchased after the occurrence of transactions forming basis of suit.

This was an action by a corporation to recover for misappropriation and waste of its assets by former officers, directors and others. All of the wrongful acts were indicated as having been committed prior to the time in 1946 when one individual purchased the entire outstanding stock in the company. The action was thus brought for his benefit, except in so far as the rights of creditors might have been involved.

The New York Supreme Court, Appellate Division, First Department, said: "The decisive consideration on this appeal is that the complaint was properly dismissed under section 61 of the General Corporation Law in view of this provision: 'In any action brought by a shareholder in the right of a foreign or domestic corporation it must be made to appear that the plaintiff was a stockholder at the time of the transaction of which he complains or that his stock thereafter devolved upon him by operation of law.'" The court indicated that the single stockholder "would have been prevented from bringing a stockholder's derivative action by this clause in section 61." It regarded the situation as the same as though ratification by all the prior stockholders had taken place and remarked that "the effect upon the corporation should be held to be the same," and continued: "The point is that just as the courts of this state have long held that a corporation cannot sue where recovery would inure only to the benefit of stockholders none of whom could institute a derivative action due to ratification or estoppel, so now, under the same principle, a corporation cannot prosecute an action in which recovery would be for the sole benefit of stockholders all of whom would be precluded from instituting a derivative action by section 61 of the General Corporation Law."

Capitol Wine & Spirit Corporation v. Pokrass et al., New York Supreme Court, Appellate Division, First Department, June 13, 1950. Edgar A. Samuel, of counsel (Milton P. Kupfer with him on the brief; Kupfer, Silberfeld, Nathan & Danziger, attorneys) for plaintiff-appellant-respondent. William G. Mulligan, of counsel (Lewis B. Greenbaum and Edwyn Silberling with him on the brief; William G. Mulligan, attorney) for defendants-respondents-appellants. Julius L. Meyer for defendant-respondent Albert C. Drucker. Commerce Clearing House Court Decisions Requisition No. 435210.

Injunction granted against use of corporate name which included a registered trade-mark.

Plaintiff corporation's name had included the words, "Facts on File" since its organization in 1940 and it had operated its service under the regis-

tered trade-mark "Facts on File" since 1941. Plaintiff was in the business of selling a factual information service to its subscribers and it also furnished them telephone service when requested and whenever possible. The services performed by the plaintiff were well known throughout the United States. Defendant corporation was incorporated in July, 1949, under the name "Facts on Dial, Inc." Its business consisted of a telephone factual information service to its subscribers. From the evidence it appeared that one of the defendant's officials, before its incorporation, had visited plaintiff's place of business and had become a subscriber.

The New York Supreme Court, Special Term, Part VI, concluded that, from the evidence, a reasonable inference could be drawn that the defendant had chosen the name "Facts on Dial" with intent to derive benefit from it at the expense of the plaintiff. It further concluded that the names "Facts on Dial" and "Facts on File" were not only similar as descriptive of the business but likewise in sound. The court held that plaintiff was entitled to an injunction restraining the defendant from using any name or style similar to the name "Facts on File, Inc." or any imitation of such name.

Facts on File, Inc. v. Facts on Dial, Inc., New York Supreme Court, Special Term, Part VI, July 27, 1950. Commerce Clearing House Court Decisions Requisition No. 437898.

Stockholder found entitled to obtain stockholders' list where corporation failed to sustain burden of its charge of an improper purpose.

Petitioner, a stockholder in respondent corporation, after having made a demand upon the corporation and its transfer agent for the inspection of its stock book, which was refused, brought this proceeding in the New York Supreme Court, Special Term, New York County, Part IV, for an order to compel such inspection. The corporation answered that the stock list was sought for a purpose not within the intendment of the statute, Sec. 113, S. C. L., and that a procedure existed under the regulations of the Securities and Exchange Commission, which assured petitioner the right to request the corporation's management to mail proxy solicitations to the company's stockholders.

The court ruled that the petitioner's use of the Securities and Exchange procedure to solicit proxies did not deprive him of the right to secure inspection under Section 113 of the Stock Corporation Law and to communicate with fellow stockholders in the interest of concerted action. It was also found that the corporation failed to sustain its charge of an improper purpose. Petitioner having testified that his sole object in seeking the stock list was to ascertain the identity of the other stockholders for the purpose of enlisting their aid in ousting the present board of directors at the next annual meeting of stockholders, the court observed: "That this is a proper purpose under Section 113 is clear."

Application of Ditisheim, 96 N. Y. S. 2d 622. Barron, Rice & Rockmore, Julius Hallheimer, of counsel, of New York City, for petitioner. Cravath, Swaine & Moore, Harold R. Medina, Jr. and Frank McGarry, of counsel, of New York City, for respondent White Motor Co. Milbank, Tweed, Hope & Hadley, Eugene H. Nickerson, of Counsel, of New York City, for respondent Chase National Bank.

foreign corporations

CALIFORNIA

Service of process set aside where made upon Secretary of State as agent for unlicensed foreign corporation engaged in single transaction in interstate commerce.

A Pennsylvania corporation, not licensed in California, sold to a California firm, under a contract countersigned in Pennsylvania, certain machinery, to be shipped from Pennsylvania and to be installed at the California firm's plant, under the supervision of a man to be sent to California by the seller. The plaintiff in the Superior Court was injured during such installation by reason of the alleged negligence of this supervisor and instituted suit against the Pennsylvania company for damages, effecting service on the Secretary of State under Section 6504, Corporations Code. The corporation appeared specially and moved to quash the service. The motion was denied by the Superior Court and the company filed a petition in the District Court of Appeal, First District, Division 2, for a writ of prohibition, or alternatively, review or mandate, to halt further proceedings in the Superior Court action. The District Court of Appeal observed that the real question presented was whether the showing on the motion to quash warranted the Superior Court in holding that the Pennsylvania company was doing business in such a way as to sustain the service of process.

The District Court of Appeal concluded that the company was not doing intrastate business so as to be subject to service of process, as the "contract unquestionably constituted a transaction in interstate commerce," citing *York Mfg. Co. v. Colley*, 247 U. S. 21, where, under somewhat similar circumstances, a foreign corporation was regarded as not required to obtain a permit to do business in Texas.

Proctor & Schwartz, Inc. v. Superior Court in and for San Mateo County et al., 221 P. 2d 972. Keith, Creede & Sedgwick of San Francisco, for petitioner. Edmund J. Holl of San Francisco, for respondents.

ILLINOIS

Foreign corporation, purchasing all rights and assets of domestic company, ruled not to obtain thereby authority as successor to transact business in state without qualifying.

Appellee Indiana railroad corporation obtained by purchase in 1915 all the property, rights, franchises and assets of an Illinois railway company. It did not, however, comply with the statutes licensing foreign corporations to do business in Illinois until 1944, when it qualified and made payment, under protest, of the qualification fees which it sought to recover in this suit.

The Illinois Supreme Court reversed a decree of the Circuit Court of Sangamon County ordering the fees to be refunded, holding that appellant Secretary of State had a right to demand of appellee, and to receive, the fees required to be paid by a foreign corporation to obtain a certificate to transact business in the state. It indicated that the mere fact that the foreign corporation acquired the property of the Illinois company gave it no right to the privilege to transact business as a foreign corporation, except in accordance with the statutes of the state. The fact that the foreign corporation had, in 1915, applied for and secured permission to sell and issue certain stocks, bonds and securities and made payment of the fees required, was regarded by the court as immaterial.

*Cincinnati, Indianapolis & Western Railroad Co. v. Barrett et al.,** 94 N. E. 2d 294. Ivan A. Elliott, Attorney General, of Springfield (William C. Wines, Raymond S. Sarnow, James C. Murray and A. Zola Groves, all of Chicago, of counsel), for appellant. Graham & Graham of Springfield (William Eggers, of counsel), for appellee. Commerce Clearing House Court Decisions Requisition No. 439266.

* The full text of this opinion is printed in the **State Tax Reporter**, Illinois, page 528.

NEW JERSEY

Qualification ruled not to make a corporation a resident of state other than that of its incorporation.

In a civil action against a foreign corporation authorized to do business in New Jersey, involving claims for personal injury and for damages occasioned by fraudulent representations of the defendant, the answer filed pleaded as an affirmative defense that the prosecution of the respective claims was barred by the statute of limitations. The plaintiffs filed a motion to dismiss each of the separate "defenses" in which the defense was raised. "The ultimate question presented for our determination at this time," observed the United States District Court, District of New Jersey, "appears to be novel. The law of this state is determinative of the question, but we have found no cases in which the question has been decided by the courts of this state." The particular staute of limitations, R.S. 2:24-7 contains a provision that where the defendant in a specified type of suit is not a resident of the state when the cause of action accrues, "the time or times during which such person is not residing within this state shall not be computed as a part of the periods of time within which such actions are required to be commenced by said sections; and the person entitled to any such action may commence the same after the accrual of the cause therefor, within the periods of time limited therefor by said sections, *exclusive of such time or times of nonresidence.*" (Emphasis by the court.)

The plaintiffs were upheld in their contention that this statute of limitations could not be invoked by the defendant, a foreign corporation authorized to do business in New Jersey, rejecting defendant's arguments that it was a "resident" of the state for all legal purposes when the causes of action accrued and thereafter and that a corporation was not a "person" within

the meaning of the statute. The court remarked that "a foreign corporation remains a resident of the state of its incorporation even though it may hold a certificate of authority to do business elsewhere."

Kenny et al. v. Duro-Test Corporation, 91 F. Supp. 633. West & West of Jersey City, for plaintiffs. Burke, Sheridan & Hourigan of Union City and *Gerald T. Foley of Newark*, for defendant.

PENNSYLVANIA

Default judgment sustained where resulting from incomplete address given as registered address on qualification.

When defendant Wisconsin corporation registered in 1933 to do business in Pennsylvania, it gave as its registered office or location in Pennsylvania a street address at which it never had an established place of business, which was the street address of an independent broker, who from time to time represented defendant in Pennsylvania. No connection between defendant and the independent broker was indicated in the registration. A year or so later the independent broker removed to another street address in the immediate neighborhood of the first address, where it continued until the time of this ruling. Neither the Secretary of the Commonwealth nor the plaintiff in the suit was aware of any connection between the broker and the defendant. Process was mailed by the Secretary of the Commonwealth, as provided by the Pennsylvania statute, to the defendant at the given street address, by registered mail. It was returned to him, since no one had knowledge of the defendant at that particular location.

On these facts, the defendant asked the United States District Court for the Eastern District of Pennsylvania to find there was "excusable neglect" on defendant's part under Rule 60(b) for failure to notify the Secretary of the Commonwealth of a change of its registered office address. The court refused to take action to set aside a judgment by default obtained under the circumstances, remarking: "In my opinion, these facts constitute gross neglect, the blame for which lies entirely with the defendant corporation." "If I should grant the application to set aside the default judgment on that ground, I would be ruling that there is a legal obligation upon the plaintiff or the Secretary of the Commonwealth to actually notify a foreign corporation defendant at its home office address of the existence of a suit before further action may be taken in the proceeding, despite the registration provisions of the Pennsylvania statute. I do not understand this to be the law. Further, I am not convinced that defendant in its proposed answer has set up a wholly meritorious defense."

Italian Cook Oil Corporation et al. v. Charles A. Krause Milling Co., United States District Court, Eastern District of Pennsylvania, October 16, 1950. Joseph De Lacy of Philadelphia, for the plaintiff and substituted plaintiffs. Stradley, Ronon, Stevens & Young, of Philadelphia, for the defendant. Commerce Clearing House Court Decisions Requisition No. 440432.

Foreign corporation ruled subject to process on cause of action arising prior to discontinuance of business, where its local activities were found to have been continuous, systematic and habitual.

Plaintiff was a former employee of defendant foreign corporation. Service was effected upon a vice-president of the latter while he was attending a shoe show in Philadelphia at a time after the termination of plaintiff's employment as an exclusive territorial sales representative for a large area on the Eastern seaboard and after the discontinuance of a Philadelphia office which plaintiff had operated. The cause of action, however, involving commissions alleged to be due plaintiff for the preceding year, had arisen before the discontinuance of the Philadelphia office.

The Court of Common Pleas No. 7 of Philadelphia County, upheld the service, upon a showing of many and varied activities which had been conducted by the corporation through the Philadelphia office. These had included the solicitation of orders by the plaintiff and other agents, the listing of the office in telephone and building directories, mailing of catalogs locally, supplying local dealers with window display material and participation annually in local shoe shows, at which orders were obtained for shipment of shoes from defendant's Massachusetts plant to local customers and to customers in other states. Twice a year samples, displayed locally, were sold to a Philadelphia customer. The court regarded these activities as "continuous, systematic and habitual" and the company as clearly "doing business" so as to uphold the service of process under the circumstances.

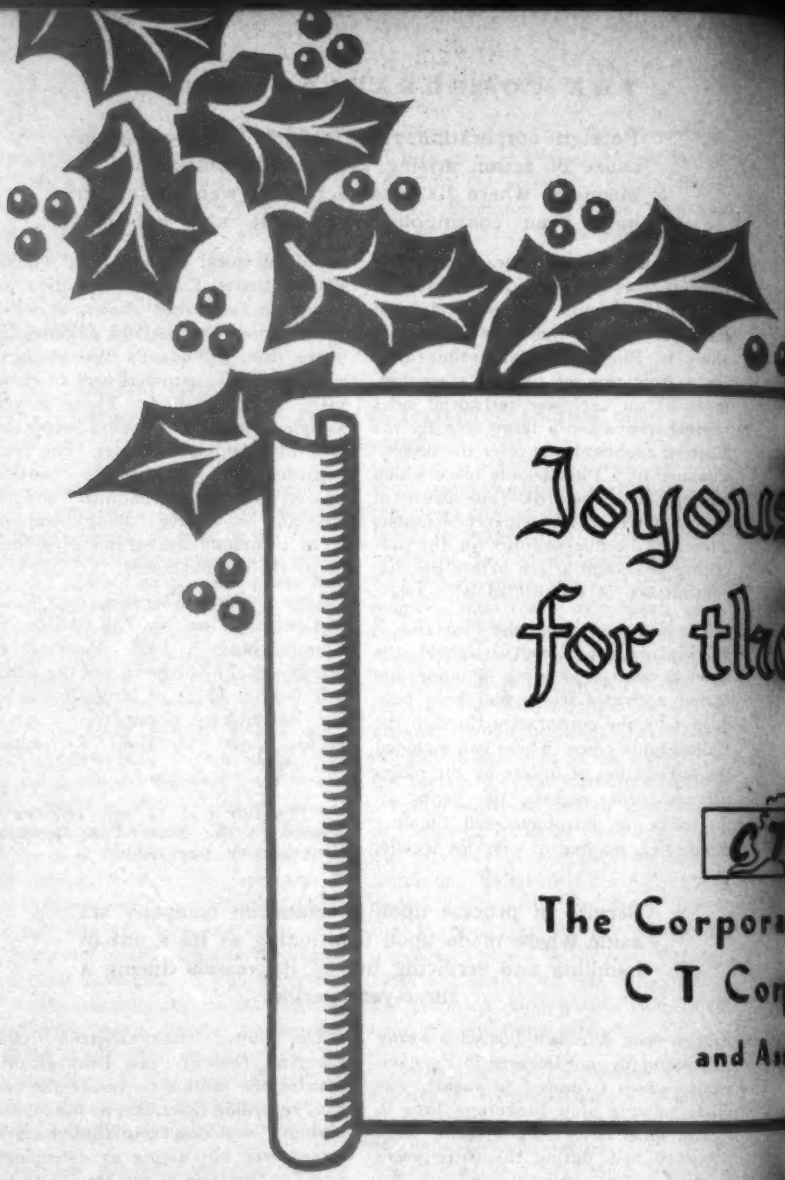
*Levy v. Curtis Shoe Co., Inc.** Court of Common Pleas No. 7 of Philadelphia County, May 2, 1950. Marshall H. Morgan of Philadelphia, for the plaintiff. Goff & Rubin of Philadelphia, for the defendant. Commerce Clearing House Court Decisions Requisition No. 438701.

* The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 10,674.

Service of process upon a steamship company set aside where made upon firm acting as its agent in handling and servicing five of its vessels during a three-year period.

Service upon defendant Louisiana steamship company, not licensed in Pennsylvania, which it moved to vacate, was made upon a ship brokerage firm in Philadelphia as its alleged agent. That company had, during the three years prior to the service, acted as defendant's agent to handle and service a total of five of defendant's ships. The last such vessel had left Philadelphia more than a month prior to the service of process.

The United States District Court, Eastern District of Pennsylvania, granted the motion to vacate the service, regarding defendant as not "doing business" and observing that the firm served was not acting as defendant's agent at the time of the service of the summons. Defendant's activity was viewed as "occasional or sporadic," as contrasted with two cases, involving steamship companies which were held to be doing business and subject to



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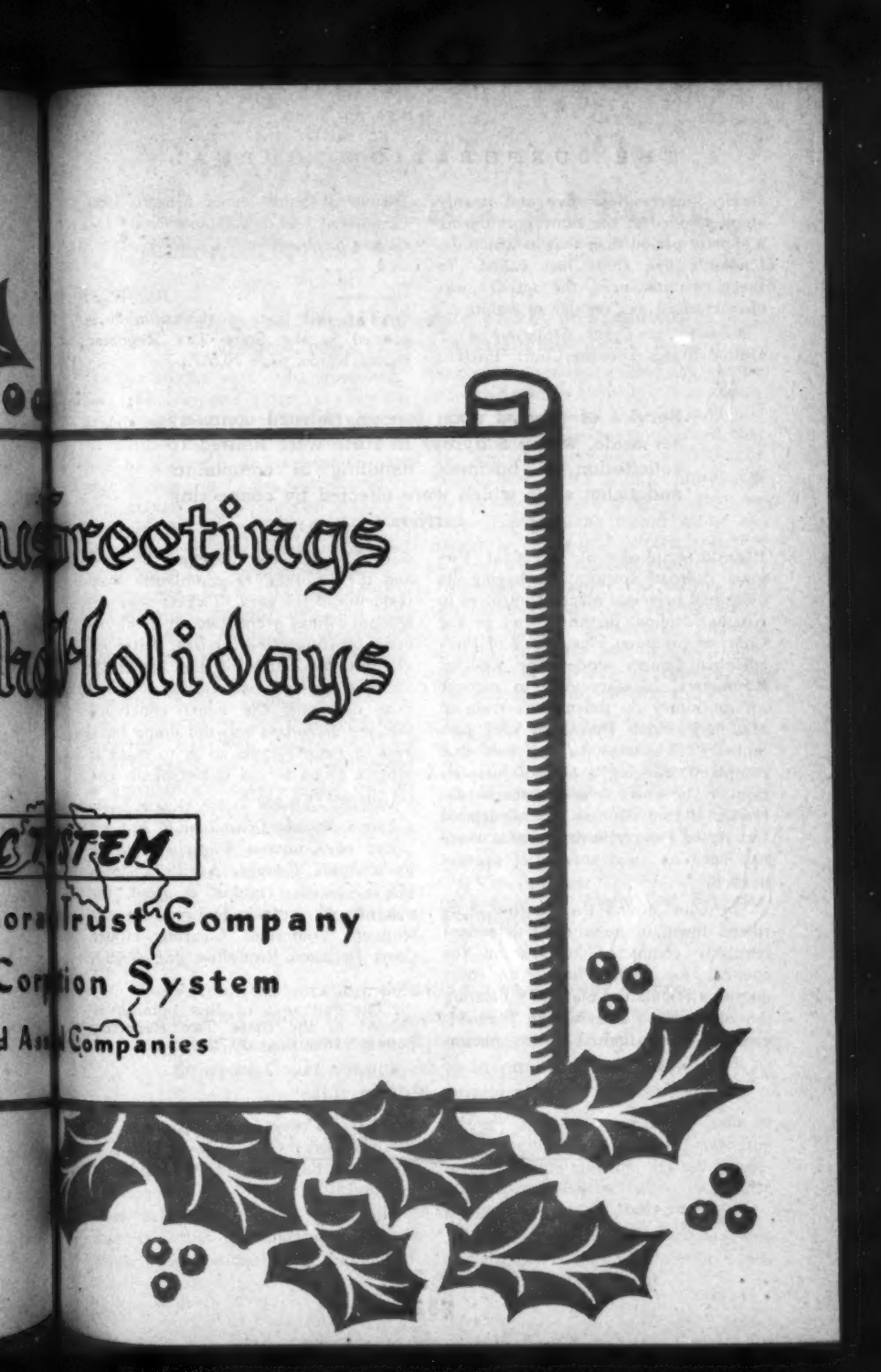
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service, where thirty-five and twenty ships stopped at the same port during a shorter period than that in which defendant's five ships had called. In these two instances, the activity was characterized as "regular or habitual."

*Novitski v. Lykes Steamship Co.,** United States District Court, Eastern District of Pennsylvania, June 16, 1950. Commerce Clearing House Court Decisions Requisition No. 435965.

* The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 10,697.

Service of process upon foreign railroad company set aside, where activities in state were limited to solicitation of business, handling of complaints and ticket sales which were effected by connecting carriers.

Plaintiff employee of defendant Virginia railroad corporation, having its office and principal place of business in North Carolina, instituted suit in the Court of Common Pleas No. 3 of Philadelphia County under the Federal Employers' Liability Act, to recover for an injury on defendant's train in Miami, Florida. Defendant filed preliminary objections to the suit and complaint, alleging a lack of jurisdiction of the court over it because defendant did no business in Philadelphia County or Pennsylvania and that there had been no valid service of process upon it.

The court found the question narrowed down to one whether defendant regularly conducted business in the county, As to the facts, the court quoted a stipulation of facts indicating that defendant's activities in Pennsylvania had been limited to the solicitation of freight and passenger business and the handling of complaints from residents in the area. Tickets over defendant's lines were sold in Pennsylvania by connecting carriers. After reviewing the terms of the applicable statutes and a consideration of pertinent decisions, the court concluded that the defendant was not doing business in Pennsylvania so as to make it subject to an action in personam and set the service aside.

*Law v. Atlantic Coast Line R. R. Co.,** Court of Common Pleas No. 3 of Philadelphia County, April 25, 1950. Meyer, Lasch, Hankin & Poul, for plaintiff. H. Francis DeLone, for defendant. Commerce Clearing House Court Decisions Requisition No. 438213.

* The full text of this opinion is printed in the **State Tax Reporter**, Pennsylvania, page 10,701.

taxation

FLORIDA

Mortgage on Florida real estate, held by non-resident creditor, ruled subject to intangibles tax.

"In this original mandamus proceeding," said the Supreme Court of Florida, "this court is asked to decide whether an obligation represented by a note held by a New York corporation, payable in New York City, and secured by a mortgage on Florida real estate, is liable for the Class C Intangible Personal Property Tax levied and assessed by Chapter 199, Florida Statutes 1941, as amended, F.S.A. The debtor is a Delaware corporation, having its principal place of business in Clewiston, Florida, and owning property in Glades, Hendry, Martin and Palm Beach Counties, State of Florida, which is the realty covered by the mortgage here involved." It was alleged that no Florida agency or broker participated in negotiating the loan, which had no relation to the New York corporation's Florida insurance business, and that neither the note nor the owner had a domicile or business situs in Florida with regard to the transaction and obligation and that, therefore, Florida had no jurisdiction to tax the obligation evidenced by the note and mortgage.

The court denied the writ and dismissed the cause. It emphasized that the intangibles tax was required to be paid before a lien in the nature of a mortgage on real property may be placed upon public record or be enforecable in the state courts and that where "the non-resident creditor elects to invoke and enjoy the benefits and protection of our laws and to obtain the economic advantages afforded thereby, it is only just that we should give a quid pro quo in return." The tax was, therefore, sustained.

*State ex rel. United States Sugar Corporation v. Gay, Comptroller,** 46 So. 2d 165. Evans, Mershon, Sawyer, Johnston & Simmons of Miami, for petitioner. Lewis H. Tribble of Tallahassee, for respondent.

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* The full text of this opinion is printed in the **State Tax Reporter,** Florida, page 2868.

GEORGIA

Foreign corporation, soliciting orders through office in state, followed by shipments of goods from another state direct to local customers, ruled by state Supreme Court not subject to income tax under law prior to 1950 amendment.

In *Redwine, Commissioner of Revenue v. Dan River Mills, Inc.*, decided December 12, 1949, by the Fulton County Superior Court, (The Corporation Journal, February, 1950, page 92), it was held that the maintenance by a foreign corporation, having a local bank account, and soliciting orders sent to the home office in another state for acceptance or rejection, did not constitute "doing business" so as to require the payment of the state income tax.

Upon appeal, this judgment has been affirmed by the Georgia Supreme Court.

The company was a Virginia corporation, with its principal office in that state. During the year in question, 1946, it had no manufacturing plant, warehouse, storage room or stock of goods within the state of Georgia. It maintained an office in Atlanta, Georgia, with three employees, and also maintained a small bank account in that city for the operation of that office. The manager and an assistant covered parts of Kentucky, Virginia, Tennessee and Louisiana, and all of North Carolina, South Carolina, Florida, Georgia, Alabama and Mississippi. Functions of the Atlanta office were to keep in touch with customers in these areas and to receive and transmit orders to the Virginia office for acceptance or rejection and to maintain good will. No representative from the Atlanta office made any contract of sale or had any authority to do so. Orders accepted by the Virginia office were filled by the shipment f.o.b. of goods from the mills or warehouses of the defendant company in Virginia, shipments being made direct to the customer or purchaser. The goods were invoiced to the purchaser by the Virginia office and all payments made to that office, the Atlanta office employees not making collections, arranging credit terms, accepting orders, adjusting complaints nor making final agreements of any kind with customers or others. Ad valorem property taxes were paid during the year on a small amount of office furniture and supplies.

In affirming the judgment of the lower court, the state Supreme Court based its decision entirely upon its ruling in *Suttles, Tax Collector v. Owens-Illinois Glass Co.*, 206 Ga. 849, 59 S. E. 2d 392 (*see digest below*), where it held that a foreign corporation was not "doing business" so as to be subject to taxation on accounts receivable arising out of local sales where such obligations were held at the corporate domicile and the state of facts were almost identical with those in this case.

Redwine v. Dan River Mills, Inc.,* Georgia Supreme Court, October 9, 1950. M. H. Blackshear, Lamar W. Sizemore and Martin H. Peabody of Atlanta, attorneys for appellant. W. K. Meadow, Spalding, Sibley, Troutman & Kelley of Atlanta, and Frank Talbot, Jr., of Danville, Virginia, attorneys for appellee. Commerce Clearing House Court Decisions Requisition No. 440221. (*Note: The Georgia income tax law was amended in 1950 by H. B. 1033, primarily as a result of the opinion of the lower court in this case, so as to reach the income of every corporation owning property or doing business in the state, and providing that a corporation "shall be deemed to be doing business within this state if it engages within this state in any activities or transactions for the purpose of financial profit or gain, whether or not such corporation qualifies to do business in this state and whether or not it maintains an office or place of doing business within this state and whether or not any such activity or transaction is connected with interstate or foreign commerce."*)

* The full text of this opinion is printed in the **State Tax Reporter**, Georgia, page 1670.

Foreign corporation ruled not taxable on accounts receivable arising from local sales, where shipments were effected by delivery to common carrier before reaching state.

The appellee foreign corporation was successful in the Fulton County court in obtaining an injunction preventing the Tax Collector of Fulton County

from collecting 1941 State and County taxes assessed against its accounts receivable. Upon appeal, this judgment was affirmed by the Georgia Supreme Court.

The company, with its home office at Toledo, Ohio, where all orders obtained were subject to acceptance or rejection, had manufacturing plants in eight or more states, but none in Georgia. Two offices were maintained in Georgia. One of these, a sales office, solicited orders which were filled by shipments from outside the state, ear-marked for the customers and shipped to a local transfer company, which the purchasers engaged to effect delivery within the state. The other office functioned in selecting distributors throughout the Southeast for certain of the company's products, subject to approval by the Ohio office, in calling upon local architects, engineers and builders to educate them in the use of the company's products and otherwise promote such products. One of these local distributors, at all times carried adequate stocks of these products for the purpose of giving prompt and efficient service to dealers, contractors and others who purchased within its territory.

The Georgia Supreme Court reviewed its decisions and those of the Supreme Court of the United States relating to the taxation of intangibles, in considering the taxability of the corporation's accounts receivables due from residents of the state. Concluding that such property was not subject to the tax on intangibles, the court observed: "Here the owner maintained its main office in another State, had agents and offices in this State where orders were taken by those agents subject to approval at the main office, but no sales were concluded in this state. All the goods were shipped under directions from the main office from points without this state, and, by express terms of the sale, title passed to the purchasers when the goods were delivered to the common carrier and before reaching this state."

Suttles v. Owens-Illinois Glass Co.,* 206 Ga. 849, 59 S. E. 2d 392. W. S. Northcutt, Durwood T. Pye, E. A. Wright and James W. Dorsey of Atlanta, for appellant. MacDougall, Troutman, Sams & Schroeder of Atlanta, for appellee.

* The full text of this opinion is printed in the **State Tax Reporter**, Georgia, page 2755.

KENTUCKY

Foreign corporation held subject to property taxes on towboats and barges, apportioned on a mileage basis, in absence of a statutory method of apportionment.

The question before the Kentucky Court of Appeals was whether appellee Maine transportation company's towboats and barges, operated in the service of its parent company over a regular route on the Ohio River between Huntington, West Virginia, and Cincinnati, Ohio, of which route 94.6% was in Kentucky and 5.4% in West Virginia, were subject to property taxes and whether appellee was entitled to enjoin appellant State Commissioner of Revenue from prosecuting omitted tax assessment proceedings in the county courts of eight Kentucky counties. Appellee insisted the attempted assessments were illegal on constitutional grounds and for lack of statutory authority, contending that the barges had not acquired a tax situs in Kentucky.

The court concluded that the property had acquired such a tax situs, finding a thread of permancy in the company's activities with relation to Kentucky. It emphasized that about 94.6% of the mileage covered by the craft was within Kentucky, and remarked: "This continuity and consistency of presence in Kentucky attaches such permancy as to take it out of the zones of mere transiency or a sporadic and temporary presence," and that the "parts of this whole receive the protection of the state."

As to the imposition of taxes upon the aliquot of boats and barges having a situs within the boundaries of the taxing districts of Kentucky, the court noted that no apportionment scheme was prescribed by statute, and observed: "Consequently, we must look to see if the mileage basis is a fair and just method of calculating the aliquot part of appellee's boats and barges which have acquired a tax situs in Kentucky and in the several taxing districts." The court regarded this method as logical and fair and to have foundation in numerous decisions, including those of the Supreme Court of the United States. The tax was, therefore, upheld and a judgment enjoining the asessments was reversed.

Reeves v. Island Creek Fuel and Transportation Co.,* 230 S. W. 2d 924. Henry M. Johnson and Lucian L. Johnson of Louisville, for appellant. Woodward, Hobson & Fulton of Louisville, as amicus curaie. Lorimer W. Scott of Newport and Rolla D. Campbell and F. A. MacDonald of Huntington, for appellee. Commerce Clearing House Court Decisions Requisition No. 429408. (*Petition for writ of certiorari filed in the Supreme Court of the United States, August 29, 1950; Docket No. 277.*) (*Certiorari denied, October 16, 1950.*)

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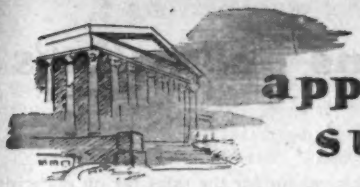
* The full text of this opinion is printed in the **State Tax Reporter**, Kentucky, page 2580.

state legislation

Colorado—House Bill 4 reduces the income tax, in an amount equal to 20% of the net tax computed under existing rates, for one taxable year, either calendar or fiscal, beginning after December 31, 1949.

Louisiana—Act 349 provides a procedure whereby a foreign corporation which is not to exercise all of its corporate powers in Louisiana may qualify to do a limited type of business in the state.

Massachusetts—Chapter 816 added Section 48.1 to Chapter 63 of the General Laws to provide that the entire Corporation Excise Tax is, in 1951, to be due on or before April 10, when the return is filed, thus advancing from October 20 to April 10, payment of the corporate excess tax portion of the 1951 Excise Tax.



appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

CONNECTICUT. Docket No. 132. *Spector Motor Service, Inc. v. O'Connor,* 181 F. 2d 150. (The Corporation Journal, May, 1950, page 153.) State franchise tax liability—qualified interstate trucking corporation—interstate commerce. **Petition for writ of certiorari filed, June 15, 1950. Certiorari granted, October 9, 1950. (71 S. Ct. 49.)**

GEORGIA. Docket No. 4. *Georgia Railroad & Banking Company v. Redwine,* United States District Court, Northern District of Georgia, July 29, 1949. (The Corporation Journal, February, 1950, page 92.) Property tax exemption—suit against state in Federal Court. **Appeal filed, November 12, 1949, Jurisdiction noted, December 5, 1949. February 20, 1950:** *"Per curiam:* Inasmuch as the Attorney General of Georgia stated at the bar of this Court that plain, speedy and efficient State remedies were available to appellant, the cause is ordered continued for such period as will enable appellant with all convenient speed to assert such remedies." (70 S. Ct. 472.)

ILLINOIS. Docket No. 133. *Norton Co. v. Department of Revenue,* 405 Ill. 314, 90 N. E. 2d 737. (The Corporation Journal, April, 1950, page 128.) State Retailer's Occupation (Sales) Tax—interstate shipments into Illinois. **Petition for writ of certiorari filed, June 15, 1950. Certiorari granted, October 9, 1950. (71 S. Ct. 49.)**

KENTUCKY. Docket No. 227. *Reeves v. Island Creek Fuel and Transportation Co.,* 230 S. W. 2d 924. (The Corporation Journal, December, 1950, page 235.) Property taxes on tow-boats and barges of foreign corporation on a mileage apportionment basis. **Petition for writ of certiorari filed, August 29, 1950. Certiorari denied, October 16, 1950. (71 S. Ct. 82.)**

MARYLAND. Docket No. 275. *Brown v. Eastern States Corporation et al.,* 181 F. 2d 26. (The Corporation Journal, October, 1950, page 184.) Standing of stockholder seeking relief under reorganization plan—removal of suit to Federal court. **Petition for writ of certiorari filed, August 28, 1950. Certiorari denied October 23, 1950. (71 S. Ct. 88.)**

NEW JERSEY. Docket No. 384. *State of New Jersey v. Standard Oil Co.,* 74 A. 2d 565. (The Corporation Journal, October, 1950, page 186.) Personal property—corporations—escheat. **Appeal filed, October 25, 1950.**

TENNESSEE. Docket No. 400. *Crane Co. v. Carson,* Tennessee Supreme Court, July 15, 1950. (The Corporation Journal, November, 1950, page 216.) State franchise and excise taxation—allocation formulas. **Petition for certiorari filed, November 3, 1950.**

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* Data compiled from **CCH U. S. Supreme Court Bulletin,** 1950-1951.

regulations and rulings

Alabama—A contractor is liable to his vendor for the sales tax on material that goes into a municipal project on which he is working. The sale to the contractor is the ultimate sale and the use of the material by the contractor in the performance of his contract is not a sale of property by him to the landowner, but such property is used or consumed in the performance of his contract. (Opinion of the Attorney General, State Tax Reporter, Alabama, ¶ 69-012.)

Florida—In order to determine the value of shares of no par value stock for the purpose of assessing the annual filing fee due from a corporation, the amount of surplus of a corporation may be taken into consideration. By its 1949 amendment of the law, the legislature intended that the amount of surplus should be considered. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Florida, ¶ 11-004.)

General—As a new year approaches and the qualification of corporations to do business in new states is under consideration, counsel has found that a delay in effecting qualification and in the commencement of business activities in certain states until after January 1 may postpone, for a year, liability for the filing of franchise and income tax returns, and the payment of corresponding taxes, which would otherwise be due early in the new year. Such a delay may also bring about a postponement, for a year, in the preparation of returns of information and withholding at the source, annual reports, personal property tax returns, chain store tax applications and any corresponding payments.

Kentucky—Where a corporation has simply become defunct and failed to operate over a period of years, the statutory provisions are not applicable for removing the corporation from the Secretary of State's list by action instituted by the Attorney General. A person desiring to use the name of such defunct company must obtain the written consent of the incorporators. (Opinion of the Attorney General, State Tax Reporter, Kentucky, ¶ .002.)

Maryland—An out-of-state buyer who contracts for goods and has them delivered in Maryland to contract carriers employed by him for transportation into other states, is liable for the Maryland retail sales tax and that the imposition in such a case does not contravene the commerce clause of the Federal Constitution. (Opinion of the Attorney General to the Retail Sales Tax Division, State Tax Reporter, Maryland, ¶ 64-515.)

Michigan—A foreign banking corporation may be admitted to do business in Michigan under the General Corporation Act to do a restricted business for which a corporation may be formed under the Michigan General Corporation Act. (Opinion of the Attorney General to the Corporation and Securities Commission, State Tax Reporter, Michigan, ¶ 200-027.)

Missouri—Sales by Missouri sellers to Missouri buyers in which merchandise is shipped directly to the buyers from without the state are intrastate sales and not exempt from the Missouri Sales Tax Act. (Opinion of the Attorney General to the Assistant Supervisor, Division of Collection, Department of Revenue, State Tax Reporter, Missouri, ¶ 64-737.)

New York—A ruling of the New York Department of Finance and Taxation indicates that, for the purpose of computing the license fee of foreign corporations imposed by Section 181 of the Tax Law, a corporation is required to compute the license fee on the basis of its capital structure existing during the year covered by its franchise tax report, rather than on its capital structure resulting from a change made subsequent to the termination of such taxable year but prior to the filing of its report. (State Tax Reporter, New York, ¶ 98-146.)

North Carolina—A corporation may be required to insert in its charter the name and address of its process agent in the state, since the statute contemplates continuity of availability of such agent from the moment the corporation is chartered. An alternative procedure to insure continuity of availability is the requirement of a signed statement designating the name and address of the agent, to be filed in the office of the Secretary of State before issuance of the charter. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 2-209.)

Once corporate authority has been suspended for failure to report or pay franchise taxes, the corporation is still in existence but is deprived of its power to act unless recourse can be had to the equitable powers of the superior court. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 8-703.)

Where a merchant sells only five-cent articles or makes only five-cent sales, the bracket system does not enable him to pass on any of the tax to the consumer, but he is nevertheless liable for the 3% tax on his gross sales, since the tax is initially imposed on the merchant. (Opinion of the Attorney General, State Tax Reporter, North Carolina, ¶ 60-103.)

A foreign corporation doing business within a Federal territory in North Carolina is not required to domesticate in that state so long as it is located entirely within such area and makes no use whatsoever of the state's facilities. Merely buying material, transporting supplies, cashing a check or other things of like nature do not constitute doing business. However, if the company maintains offices, storehouses, toolhouses or any other activity off the reservation and within the state, it will not receive any immunity because of the mere fact that it is a contractor with the Federal Government. The rule which holds that a single act within a state does not constitute doing business within such state is restricted to sales operations and does not apply to a construction contractor, even though only one building is involved. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, North Carolina, ¶ 3-005.)

some important matters

for December and January

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama—Annual Application Fee for permit to do business due on or before February 1.—Domestic and Foreign Corporations.

Alaska—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

Delaware—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

District of Columbia—Annual Report published and filed between January 1 and January 20.—Domestic Corporations.

Application for license in connection with District Franchise (Income) Tax due before January 1.—Domestic and Foreign Corporations.

Georgia—Annual License Tax Report due on or before January 1.—Domestic and Foreign Corporations.

Iowa—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

Louisiana—Annual Report due February 1.—Domestic Corporations.

Missouri—Annual Franchise Tax due on or before December 31.—Domestic and Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

New Hampshire—Annual Maintenance Fee due on first business day of January—Foreign Corporations.

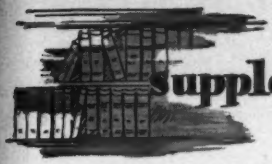
Ohio—Report to Department of Industrial Relations due on or before February 1.—Domestic and Foreign Corporations.

South Carolina—Annual Statement due January 31.—Foreign Corporations.

South Dakota—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

United States—Fourth Installment of Income Tax due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

West Virginia—Annual Business and Occupation (Gross Sales) Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.



supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Corporate Tightrope Walking. An informal presentation of recent developments affecting corporations carrying on business in interstate commerce—developments corporation officers and attorneys will want to watch carefully.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of getting lawyer's advice before contracting for work outside home state, even for federal government.

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When a Corporation Is P. W. O. L. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

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